



August 21, 2001

Ms. Tracy B. Calabrese
Senior Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2001-3681

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150928.

The City of Houston Police Department (the "department") received a request for the department's policy regarding traffic stops and arrests made by off-duty police officers. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We begin by noting that only a portion of the submitted information is responsive to the request for information. The requestor seeks all records pertaining to the policy for off-duty police officers making traffic stops and arrests. Only section 7 of the submitted general order is responsive to this request. Therefore, you need not release the remainder of the submitted information to the requestor in response to the instant request.

With respect to section 7 of the submitted general order, we address your argument under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) excepts from public disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution" if "release of the internal record or notation would interfere with law enforcement or prosecution." Gov't Code § 552.108. When section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would interfere with law enforcement. Open Records Decision No. 434 at 3 (1986). We have previously held that portions of police procedures are excepted under section 552.108(b)(1) because release of the procedures would impair an officer's ability to enforce the law and would place individuals at an advantage in confrontations with the police. *See* Open Records Decision No. 531 (1989). However, portions of the procedures that relate to generally known common law rules, constitutional limitations, or Penal Code provisions are deemed public information. *Id.* at 3.

You contend that the release of the information in the general order “would allow the public to anticipate types of restraints that will be used and the types of searches that will be conducted,” “and could cause a scene to escalate.” You have likewise submitted to this office an affidavit of a department police officer in which the officer explains why the release of section 7 of the general order would interfere with the department’s law enforcement duties. Based on your arguments and our review of the submitted information, we agree that section 7 of the general order is excepted from disclosure under section 552.108(b)(1) and may be withheld.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

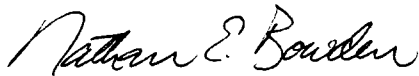
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Nathan E. Bowden".

Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 150928

Enc: Submitted documents

c: Mr. Rick Detoto
Trichter & Samuelson, P.C.
2000 Smith Street
Houston, Texas 77002
(w/o enclosures)